



# Department of Defense INSTRUCTION

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USD(P&R)

**SUBJECT:** DoD Civilian Personnel Management System: Special Retirement and Survivor Benefits for Judges of the United States Court of Appeals for the Armed Forces

- References:**
- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
  - (b) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
  - (c) Section 945 of title 10, United States Code
  - (d) DoD Instruction 1412.4, "Special Retirement and Survivor Benefits for Judges of the United States Court of Military Appeals," December 13, 1989 (hereby cancelled)
  - (e) Chapters 83 and 84 of title 5, United States Code
  - (f) Section 843.308 of title 5, Code of Federal Regulations

## 1. PURPOSE

a. Instruction. This Instruction is composed of several volumes, each containing its own purpose. The purpose of the overall Instruction, in accordance with the authority in Reference (a), is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the Department of Defense.

b. Volume. In accordance with the authority in Reference (b), this Volume:

(1) Reissues implementing policy on special retirement and survivor benefits for judges of the United States Court of Appeals for the Armed Forces as provided by Reference (c).

(2) Cancels Reference (d).

## 2. APPLICABILITY. This Volume applies to:

- a. OSD and Washington Headquarters Services.

b. Judges and former judges of the United States Court of Appeals for the Armed Forces who have completed a term of service on such court for which they were appointed and who separate from civilian service in the Federal Government on or after September 29, 1988.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. In accordance with Reference (c), judges or former judges of the United States Court of Appeals for the Armed Forces who meet the applicability criteria in section 2 may elect an annuity equal to 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the judge or former judge is separated from civilian service. The annuity, if elected, shall be in place of any other annuity for which the judge or former judge may be eligible at the time of such election (whether an immediate or deferred annuity) in accordance with subchapter III of Chapter 83 or subchapter II of Chapter 84 of title 5, United States Code (Reference (e)) or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

b. Pursuant to Reference (c), the survivor benefits of a judge of the United States Court of Appeals for the Armed Forces who elects to receive the special retirement annuity shall be identical to the survivor benefits of the retirement system to which the judge belonged while federally employed. More details are provided on the survivor benefits in the Enclosure.

c. Cost-of-living adjustments (COLAs) shall be made to the special retirement and survivor annuities at the same time and at the same percentages applicable under the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS), depending on the retirement system to which the retired judge belonged while federally employed. In the case of the FERS COLAs, however, these shall be made without regard to the age of the annuitant.

d. In accordance with Section 945(h) of Reference (c), the special retirement and survivor annuities paid in accordance with this Volume shall be paid out of the Department of Defense Military Retirement Fund.

5. RESPONSIBILITIES. The Principal Deputy Under Secretary of Defense for Personnel and Readiness, under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, shall:

a. Develop policies, establish procedures, and issue additional guidance, as necessary, to ensure proper administration of the special retirement and survivor annuity provisions applicable to judges and former judges of the United States Court of Appeals for the Armed Forces.

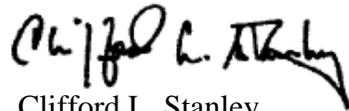
b. Develop and implement the necessary changes in the Department of Defense Military Retirement Fund system to provide for the annuities prescribed in this Volume.

c. Apply the COLAs to the retirement and survivor annuities of the judges and their survivors as prescribed in this Volume.

6. PROCEDURES. See Enclosure.

7. RELEASABILITY. UNLIMITED. This Volume is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Volume is effective upon its publication to the DoD Issuances Website.



Clifford L. Stanley  
Under Secretary of Defense for  
Personnel and Readiness

Enclosure  
Procedures  
Glossary

ENCLOSURE

PROCEDURES

1. Judges of the United States Court of Appeals for the Armed Forces are civilian employees of the Federal Government and, as such, are subject to all of the provisions in Reference (e) that pertain to the particular retirement system to which they belong. Such provisions include, but are not limited to, retirement fund contributions, disability retirement provisions, death benefits, thrift savings fund benefits, etc. The special provisions of this Volume become effective only at the time the judge or former judge separates from Federal service.
2. If a judge or former judge who was covered by the CSRS while federally employed elects the special retirement annuity provided by Reference (c), the post-retirement survivor benefit provisions that will pertain will be those of the CSRS. Therefore, in providing for a survivor annuity, the retiring judge's annuity shall be reduced by 2.5 percent of any amount up to \$3,600 specified as a base for the survivor benefit plus 10 percent of any amount over \$3,600 so specified. The survivor annuity shall be 55 percent of the retiring employee's annuity or whatever portion of it that is specified as a base for the benefits.
3. If a judge or former judge who was covered by the FERS while federally employed elects the special retirement annuity provided by Reference (c), the post-retirement survivor benefit provisions that will pertain will be those of the FERS. Therefore, in providing for a survivor annuity, the retiring judge's annuity will be reduced by 10 percent if a maximum survivor annuity is elected, or by 5 percent if a partial survivor annuity is jointly elected by the retiring judge and the retiring judge's spouse. The survivor annuity shall be 50 percent of the unreduced annuity if a maximum survivor annuity is elected, or 25 percent of the unreduced annuity if a partial annuity is elected, plus a special supplemental annuity payable until age 60 if the surviving spouse will not be eligible for Social Security survivor benefits until age 60. The details of the special supplemental annuity provision are found in section 843.308 of title 5, Code of Federal Regulations (Reference (f)).
4. In addition to the basic provisions described in sections 2 and 3 of this enclosure, all other rules and regulations, including any future rules and regulations, that pertain to CSRS and FERS post-retirement survivor benefits, COLAs, rights of spouses, rights of former spouses, recomputation of annuities upon the death of a spouse, children's benefits, etc., shall be applicable to those judges who elect the special retirement annuity provided consistent with this Volume.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

COLA cost of living adjustment

CSRS Civil Service Retirement System

FERS Federal Employees' Retirement System

PART II. DEFINITIONS

survivor benefits. For the purpose of this Volume, post-retirement survivor benefits, as opposed to benefits that accrue to survivors as a result of an employee's death in service.